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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Bishop of Charleston, a) C/A No. 2:21-cv-1093-BHH
Corporation Sole, d/b/a The)
Roman Catholic Diocese of)
Charleston, and South Carolina)
Independent Colleges and)
Universities, Inc.,)
Plaintiffs,)
vs.) DEPOSITION OF
Marcia Adams, in her official) CHARLES GLENN
capacity as the Executive) AUGUST 31, 2021
Director of the South Carolina)
Department of Administration;)
Brian Gaines, in his official)
capacity as budget director)
for the South Carolina)
Department of Administration;)
and Henry McMaster, in his)
official capacity as Governor)
of the State of South Carolina,))
Defendants.)
_____)

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1 Deposition on oral examination of CHARLES GLENN,
2 reported by Barbara S. Ham, Court Reporter and Notary
3 Public in and for the State of South Carolina; pursuant to
4 Rule 30 of the South Carolina Rules of Civil Procedure;
5 said deposition was taken via Zoom Videoconference, on
6 Tuesday, the 31st day of August, 2021, commencing at the
7 hour of 10:03 p.m.

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* * * * *

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* * * * *

Court Reporter's Legend:

dashes [--] Intentional or purposeful interruption

... Indicates trailing off

[ph] Denotes phonetically written

[sic] Written as said

This deposition is taken in accordance with the South Carolina Rules of Civil Procedure.

It is agreed and stipulated by the deponent and respective counsel that the reading and signing of the deposition by the deponent is NOT expressly waived.

WHEREUPON:

DIRECT EXAMINATION BY MR. TRAYWICK:

Q. Good morning, Dr. Glenn. My name is Lisle Traywick, and I represent Governor McMaster in this litigation he filed by the Plaintiffs in the Charleston Division of the District of South Carolina. Have you ever had your deposition taken before?

A. Yes, I have.

MR. MATTHEWS: Lisle, the witness hasn't been sworn.

MADAM COURT REPORTER: Yeah, I need to swear him in.

MR. TRAYWICK: Yes, swear him in.

Garber Reporting
info@garberreporting.com

CHARLES GLENN

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1 MADAM COURT REPORTER: Yes.

2 CHARLES GLENN, being duly sworn and cautioned to
3 speak the truth, the whole truth and nothing but the truth,
4 testifies as follows:

5 DIRECT EXAMINATION BY MR. TRAYWICK:

6 Q. Sorry about that. Do you mind if I call you Dr.
7 Glenn?

8 A. Yes, if you feel you have to, but I'm not the
9 kind of doctor who does anyone any good, so.

10 Q. All right. Well, I appreciate that. And sorry
11 for jumping the gun a second ago but will you
12 state your full name for the record?

13 A. Charles Leslie, L-E-S-L-I-E, Glenn.

14 Q. Okay. Thanks, Dr. Glenn. As I introduced myself
15 off the record before you got sworn in, my name
16 is Lisle Traywick, and I represent Governor
17 McMaster in this litigation filed by the
18 Plaintiffs. Have you ever had your deposition
19 taken before?

20 A. Yes, I have.

21 Q. Okay. Well, that's good. I am, however, going
22 to go over the rules just to make sure we're
23 reading from the same sheet of music today. If
24 you have any questions about my questions, I'd
25 ask that you please direct those toward me. If

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1 you need to take a break at any time throughout
2 the day, please just let me know. It's certainly
3 not an endurance contest, and I may need to get
4 up and take restroom breaks as well. So, please,
5 just let me know, but I'd ask that you answer the
6 question pending before we do take a break. If
7 you -- please don't speak with any of the
8 attorneys during the breaks. If you do, we'll be
9 able to ask about any conversations that you had,
10 but beyond that, if I ask a bad question, which
11 is bound to happen, please just ask me to
12 rephrase. I'm certainly not trying to confuse
13 you or create a bad record. You're doing a great
14 job of it now, but, please, just make sure you
15 let me finish my question before you answer it so
16 that we don't make the court reporter's life more
17 difficult here with the two of us talking over
18 each other. So, with that, we'll get started.
19 Madam Court Reporter, if you could please put up
20 on the screen what's been pre-marked as
21 Defendant's Exhibit Number 1.

22 MADAM COURT REPORTER: Okay. It's going to take me a
23 minute. I didn't download those to this
24 computer, but if you'll give me a second, I can.

25 MR. TRAYWICK: Okay.

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1 MADAM COURT REPORTER: I apologize. I put them on my
2 other computer. I didn't know that you were
3 going to want me to share them.

4 MR. TRAYWICK: That's fine. Would you rather me do
5 it?

6 MADAM COURT REPORTER: Either way is fine. Whichever
7 way you prefer. I apologize for that.

8 MR. TRAYWICK: I'll pull them up.

9 MADAM COURT REPORTER: Okay.

10 (DEFENDANTS' EXHIBIT 1 MARKED FOR IDENTIFICATION
11 PURPOSES (9 pages) - Notice of Taking Video-Conference
12 Deposition of Charles Glenn and Subpoena)

13 Q. All right, Dr. Glenn, have you seen this document
14 that's been marked as Exhibit Number 1 to your
15 deposition?

16 A. I've only seen one document. Let me just check
17 against what I have seen.

18 Q. Okay.

19 A. I've seen Plaintiff's Memorandum --

20 Q. Okay.

21 A. -- and Plaintiff Motion, but that's all I've
22 seen.

23 Q. Okay. So, you haven't seen a copy of the Notice
24 of Your Deposition or the Subpoena?

25 A. No.

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1 Q. Okay. Do you see --

2 A. I've seen Appendix A, yes.

3 Q. What's that?

4 A. I have seen Appendix A.

5 Q. Okay. So, you have seen Attachment A that's up
6 on the screen right now?

7 A. Right.

8 Q. Okay. And did you bring any responsive materials
9 with you today to your deposition?

10 A. I sent to Richard Dukes the -- my complete
11 references behind my expert report, and also my
12 curriculum vitae which includes the cases in
13 which I've previously been a witness. None of
14 those, I should say, were within the last five
15 years. The other items on the list I really
16 wasn't able to see how to answer.

17 Q. Okay. All right. We'll go through them in due
18 course then. What did you do to prepare for your
19 deposition today, Dr. Glenn?

20 A. Well, let me first make a personal remark that I
21 would have said before being sworn in just to let
22 you all know, I was doing some yard work this
23 morning, took a hard fall on the pavement on my
24 rear end. So, if I'm wiggling around, don't
25 think it's because I'm nervous. It's because I'm

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1 author of the Boston Desegregation Plan that was
2 implemented in 1974 and worked with about 15
3 other Massachusetts cities to, in a much more
4 peaceful way, to adopt plans to achieve racial
5 integration of their schools.

6 Q. Okay. And then at some point, you decided to
7 make a move into academia?

8 A. At one point, I found myself opposing the then
9 governor, Ed King, on a policy that I felt was
10 inequitable. I testified against it several
11 times and seeing the handwriting on the wall, I
12 made a voluntary move before being fired and, as
13 I say, Boston University offered me a full
14 professorship with no strings attached, so I
15 moved over to that position at that point.

16 Q. Thank you for that background, Dr. Glenn. Have
17 you ever been to South Carolina before?

18 A. Never.

19 Q. Okay. Have you ever taken any courses in the
20 course of your extensive education on South
21 Carolina history?

22 A. No, I don't think any have been offered at the
23 institutions where I studied. I have, of course,
24 read a number of books about South Carolina
25 history because, as you may know, I published a

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1 book on the education of African Americans since
2 colonial times and this, of course, included a
3 good deal of discussion of what occurred in South
4 Carolina.

5 Q. Okay. And what time period does that book cover?

6 A. Well, from colonial times, from the 17th century
7 into, I would say, I pretty much brought the
8 story to a close in the 1960s. I didn't try to
9 bring it into the latest time.

10 Q. And when was that book published?

11 A. Oh, gosh. I couldn't tell you. I've published
12 about 15 books and you do get confused. Here we
13 go, first published 2011.

14 Q. Okay. Thank you for that. Dr. Glenn, have you
15 ever attended any round table discussions,
16 symposia or any conferences on South Carolina
17 history?

18 A. No.

19 Q. Okay. Ever taught South Carolina history?

20 A. No.

21 Q. Have you written any articles, books, chapters or
22 any other publication about South Carolina
23 history?

24 A. Well, as I mentioned, it's covered fairly
25 extensively in this book that I just mentioned

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1 and my expert testimony and my report is taken
2 largely from that book and from another book. I
3 might just mention it while I'm at it which looks
4 at the issue of the state and schools in American
5 History and so you have all the references, at
6 least Mr. Dukes can give you all the references
7 behind those books and you will see there are
8 many references that draw upon South Carolina.
9 But I should say right away to avoid any
10 confusion, I claim no particular knowledge of
11 South Carolina history beyond what is in my
12 report, and the reason I numbered the paragraphs
13 of the report was so you could ask me about any
14 particular -- I think I mentioned South Carolina
15 in about 14 of the paragraphs. You can ask me
16 about any of those, and I will explain what I'm
17 saying there, but beyond what's in the report, I
18 really can't answer anything.

19 Q. Okay. And when was that second book that you
20 just held up published?

21 A. Well, I'll have to look again at this one.

22 Q. That's fine. Take your time.

23 A. 2012. I might mention a third book which I also
24 drew upon although I don't cite it so
25 specifically. This book "The Myth of the Common

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1 Madam Court Reporter, if you could please mark
2 the Expert Disclosure as Exhibit 4 to this
3 deposition?

4 MADAM COURT REPORTER: I got it.

5 (DEFENDANTS' EXHIBIT 4 MARKED FOR IDENTIFICATION
6 PURPOSES (2 pages) - Plaintiffs' Supplemental Rule 26(F)
7 Disclosures - Expert Witnesses)

8 Q. And I will share that now. Okay. Dr. Glenn,
9 have you seen this document?

10 A. No.

11 Q. Okay. Is that your contact information there in
12 number two?

13 A. Let me put my glasses on.

14 Q. Okay.

15 A. You're dealing with an old geezer here. Well,
16 yes, it is except that -- no, not the telephone
17 number. That was my number at Boston University,
18 but I no longer have that number.

19 Q. Okay. All right. And then between that and your
20 report, I'm wondering in what field you're being
21 offered to purportedly testify as an expert? You
22 mentioned earlier you're getting historical
23 background but what -- between your report and
24 this, I can't tell what your claiming subject
25 matter expertise is to be offered as an expert in

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1 **this case. Can you please help me with that?**

2 MR. DUKES: Object to the form.

3 A. Yes. Let me say something about my position as a
4 historian. There are basically two kinds of
5 historians. There are academic historians who
6 largely study some small issue based upon a close
7 use of the sources and so forth, and that's the
8 basis on which they obtain tenure and promotion
9 and so forth. And then there are historians who
10 are drawn to the field because they have
11 questions about some major policy issue. The
12 example I always use is Winston Churchill who had
13 no degree in history and yet wrote very
14 significant historical books because of his deep
15 engagement with policy issues and issues of war
16 and peace. I have been an expert around the
17 world really in dealing with questions of
18 educational policy and in doing so, I've written
19 a lot of history drawing upon the work of
20 academic historians. I haven't claimed to do the
21 field work in the Netherlands or in Germany or
22 Italy or in other places which I've written and
23 published books about. But my books have been
24 well received, because I have drawn together the
25 kinds of source materials which academic

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1 historians produce. Academic historians commonly
2 don't deal -- don't concern themselves with
3 fundamental questions of policy, and I'm regarded
4 as a policy expert. I'm one of the founders, for
5 example, of the European association for
6 education, law and policy and it's in that
7 context that I have written history and published
8 now half a dozen books of history which have been
9 well received. But I don't claim to be the kind
10 of historian who does the nitty-gritty field work
11 of going through the records and so forth. So,
12 what I wrote about, for example, reconstruction
13 in South Carolina, is drawn upon in books that
14 other people have written, that other historians
15 have written, and I've drawn upon those books and
16 if you care to go to my book about that, you'll
17 find that I cite them very extensively to show
18 the sources of my research. I don't know if that
19 answers your question. I want to be concerned
20 and make clear that I don't claim to be an
21 academic historian. I claim to be a policy
22 expert who uses history and also comparative
23 study to deal with questions of educational
24 policy. I might just, in that context, mention
25 that, for example, one of my recent books is a

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1 four volume, a collection of chapters on about 60
2 countries around the world spelling out in detail
3 how they relate government with schools, what the
4 constraints are, what the freedoms are, what the
5 context of those decisions is and to some extent,
6 what the historical background is. By the way,
7 that's all available for free from Johns Hopkins
8 University online now and if you're interested,
9 I'd be happy to send you the link. That may be a
10 long answer, but I was concerned not to claim
11 anything that I'm not, and I'm certainly not the
12 kind of person who works his or her way up from
13 instructor to assistant professor in the History
14 Department. That isn't my trajectory of life.

15 Q. Thank you for that. All right. So, I want to
16 kind of narrow my question a little bit. So, I
17 believe you said you're a policy expert. Did I
18 hear that correctly?

19 A. Yes.

20 Q. Okay. So, are you being offered as a policy
21 expert in this matter, Dr. Glenn?

22 MR. DUKES: Object to the form.

23 A. Well, I'm offered as an historian. Somebody who
24 has published a number of books and has been
25 recognized by a number of courts as, for example,

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1 one of the chapters in this book was accepted by
2 the trial judge in the Colorado case as expert
3 testimony. In other words, I list the work I've
4 done, and I mentioned that Justice Alito thinks
5 enough of me as a historian to cite this book
6 several times in his recent Supreme Court
7 supporting opinions. So, I think I can call
8 myself a historian for the purposes of this kind
9 of litigation.

10 **Q. Okay. And how would you characterize this kind**
11 **of litigation?**

12 **A.** Litigation that deals with questions of whether
13 provisions of a State Constitution or State law
14 violate fundamental rights protected in American
15 law and whether they arrived at that situation as
16 a result of decisions made on the basis of a
17 discriminatory considerations, whether racial or
18 religious.

19 **Q. All right. Thank you for that. Dr. Glenn, about**
20 **how long did it take you to prepare your expert**
21 **report in this matter?**

22 **A.** I would say it took me about maybe a dozen to 15
23 hours, because I did not write much of it
24 originally. What I did was to go through two of
25 my books, the ones I mentioned, and excerpt

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1 sections of those books which were relevant to
2 the particular case. And as I mentioned in the
3 report, on the references, you can go to any
4 section of my report and if you go to the book
5 from which I took it, you can find all of the --
6 all of the references, all of the sources from
7 which I drew.

8 Q. Okay. Do you have any itemized bills supporting
9 the time you spent?

10 A. No.

11 Q. No. Okay. And what's your hourly rate?

12 A. I have not asked anything.

13 Q. Okay. So you're doing this pro bono?

14 A. Well, if you or anyone else wants to offer to
15 subsidize me, I won't say no, but I haven't made
16 any demands.

17 Q. Okay. If you would please turn to your report
18 which we've marked as Exhibit 3 to your
19 deposition, and flip with me to the second page,
20 paragraph seven.

21 A. Okay.

22 Q. Can you please read that into the record?

23 A. In the report which follows, I would draw
24 primarily from my books, African American/Afro
25 Canadian Schooling: From the Colonial Period to

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1 the Present, and The American Model of State and
2 School: An Historical Inquiry. All references
3 for all the sources cited are found in one or the
4 other of those volumes and will not be provided
5 here.

6 Q. All right. And I'm going to show what I've pre-
7 marked as Exhibit Number 5 to your deposition.

8 (DEFENDANTS' EXHIBIT 5 MARKED FOR IDENTIFICATION
9 PURPOSES (26 pages) - References for books written by
10 Charles Glenn)

11 Q. Does that look familiar, Dr. Glenn?

12 A. Yes, it does. I prepared that yesterday.

13 Q. Okay. And so I'll represent to you that we were
14 -- that was produced to us yesterday as well.
15 Does that sound fair?

16 A. Yes, it does.

17 Q. Okay. In your initial report though you said
18 that you were not going to provide those sources.

19 A. I'm sorry. I don't understand.

20 Q. Well, you just read paragraph seven of your
21 report into the record. Do you recall that?

22 A. Well, I did not include in the text footnotes
23 referring to all of these sources as I would have
24 done, say, in an academic paper. I would have
25 made the document much longer and taken me much

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1 longer. So, I did not do so, but obviously one
2 could go through and find in each case the
3 sources.

4 **Q. Got you. So, you created this after you compiled**
5 **your expert report in this matter?**

6 A. No, I took this from the back, the references, of
7 the two books. If you scroll down, about halfway
8 down, you'll find that the second half of this
9 document is things from the other book; that is,
10 the American Model of State and School. So, all
11 of the sources for my expert report are in the
12 document in the that you have up on the screen
13 now.

14 **Q. So, you said you prepared this yesterday? Did I**
15 **hear that correctly?**

16 A. Well, I cut and paste it out of the two existing
17 books, yes.

18 **Q. Okay. Any reason you didn't included with your**
19 **expert report a month ago?**

20 A. No, I just -- it did not appear to be necessary,
21 but, as I said, it would have made the report
22 much longer and more academic seeming. I don't
23 know if that's, you know, your goal in this
24 instance.

25 **Q. All right. Do you think it would have been**

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1 helpful for the Defendants to have this ahead of
2 time?

3 A. I don't know. I can assure you the Defendants
4 could easily have obtained my two books. I wish
5 they would and find I've written, you know, the
6 references for every single statement in the
7 reports are there.

8 Q. Okay. But in paragraph seven, you just generally
9 reference those two books; right?

10 A. That's right.

11 Q. Okay. Do you think it's fair to send a 26-page
12 list of sources 24 hours before a deposition?

13 MR. DUKES: Object to the form.

14 A. I was responding to your attachment which
15 requested specifically that.

16 Q. Okay. So, you didn't think this was necessary
17 for your expert report?

18 A. Point E in Attachment A, a list of all books,
19 treatises, articles, publications, newspaper's or
20 materials upon which you rely to formulate your
21 opinions in this case. That's what you wrote,
22 and that's what I provided yesterday.

23 Q. Okay. I appreciate that, but in your report you
24 just said that you weren't going to provide it.
25 Isn't that right?

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1 A. No, I didn't say I wasn't going to report it. I
2 said that I didn't include it in that report. I
3 did not say I would not, if asked. Your question
4 implies a plural, a future tense, and that I
5 would say is an unfair way of characterizing what
6 I wrote.

7 Q. Okay. Doesn't it say will not be provided here?

8 A. Will not in this immediate document, yes.

9 Q. All right. Dr. Glenn, have you read the Amended
10 Complaint in this case?

11 A. I've only read the one document that I mentioned
12 to you --

13 Q. Okay.

14 A. -- and I'm not going to comment, by the way, on
15 the immediate issues in the case, because I'm not
16 competent to do so. The only document that I've
17 read is the one that was filed on April 1st. The
18 33 page document, Plaintiffs Memorandum.

19 Q. Okay. So, you haven't read Judge Hendrix order
20 denying Motion for Preliminary Injunction?

21 A. No.

22 Q. Okay. All right. And I'm just trying to get an
23 understanding of what all you've seen in this
24 case. So thanks for your patience with that.
25 Okay. I want to go through some of the

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1 paragraphs in your report. Do you still have
2 that in front of you?

3 A. Sure.

4 Q. Okay. Great. Paragraphs 8 through 11. Are
5 those primarily concerned with the 1850s and
6 1860s? Is that fair to say?

7 A. Yes.

8 Q. Okay. And do any of those paragraphs deal with
9 South Carolina?

10 A. Yes. Paragraph eight mentions the Black Code,
11 and paragraph nine mentions that in Charleston,
12 an Anglican Missionary Society had purchased two
13 slaves and trained them to teach about a
14 schoolhouse in the 18th Century. So, those both
15 refer to South Carolina.

16 Q. Okay. How about 10 or 11?

17 A. They do not refer specifically to South Carolina.
18 They refer to the general -- the general point of
19 response to emancipation which, of course,
20 included South Carolina.

21 Q. Okay. Just not specifically mentioned in here?

22 A. No.

23 Q. Okay. All right. Would you agree that
24 paragraphs 12 through 20, and I'll give you time
25 to read them. I'm not trying to do a memory test

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1 here. I just want to make sure I have an
2 understanding of your report. Would you agree
3 that paragraphs 12 through 20 deal primarily with
4 the reconstruction period?

5 A. Yes, they do.

6 Q. Okay. And which paragraphs mention South
7 Carolina?

8 A. Well, it seems to me that paragraph 14 does. I
9 mention a gathering in South Carolina that
10 adopted an address to the white people of the
11 state, asking that schools be established with
12 the education of colored citizens as well as
13 white and if the advantages of both colors shall,
14 in this respect, be equal.

15 Q. And what year was that?

16 A. Let me put my glasses back on. 1865.

17 Q. Okay. All right. So we've gotten through
18 paragraph 14. How about 15 through 20? Any of
19 those deal with South Carolina?

20 A. The next paragraph that deals with South
21 Carolina, specifically, that I mention is 27.
22 But, again, all of these chapters deal with South
23 Carolina in the sense that in the situation South
24 Carolina was quite similar to that elsewhere in
25 the south.

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1 Q. Okay. Just no specific examples cited. Is that
2 fair to say?

3 A. Exactly.

4 Q. Okay.

5 A. So, what those chapters established -- what those
6 paragraphs established is that, along with the
7 efforts by black citizens of the south, there
8 were efforts by northern explicitly religious
9 organizations to provide schooling for freed
10 slaves and their children. Enslaved persons,
11 formerly enslaved persons and their children.

12 Q. In that strain reconstruction. Is that correct?

13 A. Exactly.

14 Q. Okay. All right. Thank you for that. All
15 right. I'd like to move, if you don't mind, to
16 paragraphs 21 through 25. Is it fair to say that
17 the period you focus on there is the 1860s and
18 the 1870s?

19 A. Yes.

20 Q. All right. And which paragraphs, if any, mention
21 South Carolina?

22 A. Well, I mentioned in 27. I don't think we've
23 gotten there yet.

24 Q. No, we're not quite there yet.

25 A. Okay.

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1 Q. So, none of those do?

2 A. No.

3 Q. In paragraph 26, those are two quotes from W.E.
4 Du Bois? Is that correct?

5 A. Right.

6 Q. Okay. One in 1910 and one in 1941? Is that
7 correct?

8 A. Yes.

9 Q. All right. Paragraph 27, you mentioned does
10 concern South Carolina. Is that right?

11 A. Yes.

12 Q. Okay. And what are you discussing in that
13 paragraph, please?

14 A. The first of post-war Constitutional Convention
15 of 1868 in which there were 13 black teachers who
16 worked hard to insure that South Carolina had a
17 plan for the education of black citizens as well
18 as white citizens. And so they developed an
19 education plan that made it the duty of the
20 legislature to insure that.

21 Q. Okay. And that was in the convention of 1868?

22 A. That's right.

23 Q. Is that correct?

24 A. That's right.

25 Q. And we've had several revisions of the State

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1 **Constitution since then.**

2 A. Right.

3 Q. Would you agree with that?

4 A. Yes. I mention there, by the way, that at this
5 point, South Carolina was arguably ahead of a
6 number of northern states which did not yet have
7 compulsory schooling. So, South Carolina is
8 seeking to move toward making schooling universal
9 in a very progressive way for which it deserves
10 credit.

11 Q. All right. Thank you for that.

12 A. I'm sorry. I will say the very next paragraph
13 goes on to talk about the very significant
14 progress that South Carolina made as a result of
15 those efforts.

16 Q. Okay. And those statistics primarily focus on
17 the period of 1870 to 1884. Is that fair to say?

18 A. Right. Yes.

19 Q. Okay. All right. How about paragraph 29? Does
20 that mention South Carolina?

21 A. Yes, it does.

22 Q. Okay.

23 A. Do you want me to read what it says?

24 Q. My question more is the time frame? Is that
25 dealing with the 1860s through the 1880s? Would

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1 that be fair to say?

2 A. Yes, it is.

3 Q. Okay. There's a quote from the Charleston Daily
4 Courier in there.

5 A. Right.

6 Q. Okay.

7 A. The goal should be to educate every white child.
8 You can see already the resistance that would
9 develop much more strongly later.

10 Q. Okay. Paragraph 30, Dr. Glenn, you mention
11 schooling was a major casualty of Democratic
12 rule. Was that in the south or was that meant to
13 be the entire country?

14 A. Let's again, make clear, Democratic with a
15 capital D.

16 Q. Right, right. I'm sorry.

17 A. Hearing you and not looking at my own text, I
18 took that to mean that -- that participation by
19 voters would inevitably be against schooling and,
20 of course, that wasn't --

21 Q. No, your report had a capital D?

22 A. Yeah. Once the Republicans began to lose their
23 very short range in politics in a number of
24 southern states, schooling became much less
25 significant as a goal and I mention in that

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1 paragraph that some states all but dismantled the
2 education systems that had been established
3 through reconstruction. Let me just interject at
4 this point to save you from perhaps having to
5 return to it, this made all the more important
6 the efforts that were being funded and organized
7 by religious based groups. In other words, as
8 the state efforts fell apart the voluntary
9 religious efforts became even more significant,
10 because they filled the gap -- the resulting gap.

11 Q. All right. Thank you for that. And the last
12 sort of cluster of paragraphs in this section of
13 your report, Dr. Glenn, paragraphs 31 through 37.
14 Those pretty much discuss the reconstruction
15 period in general; correct?

16 A. Yes. I mention South Carolina in 31, of course.

17 Q. 31. Right. Okay. Any others?

18 A. The next time I mentioned South Carolina was in
19 35.

20 Q. Okay.

21 A. When a black congressman from South Carolina
22 warned Congress that -- that unless it was
23 vigilant that all the progress that had been made
24 since abolition slavery was in danger of being
25 reversed.

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1 Q. Thank you, Dr. Glenn. So, that is -- we've gone
2 through now some of the paragraphs and the
3 provisions of schooling that freed them section
4 of your report. Any other opinions you intend to
5 offer about that period that, based on my
6 calculation, runs through reconstruction or
7 shortly thereafter?

8 A. Well, I think it's worth mentioning in paragraph
9 36 that at the South Carolina convention, that is
10 the one in 1868, not the later one which I'm sure
11 we'll be discussing, that the black delegates had
12 argued for integrated schools. But that if
13 schools were integrated, a white delegate warned
14 that no white children would attend those schools
15 at all. So, it's clear that the lines are being
16 very strongly drawn at that point already even
17 though this was still in -- in the exact middle
18 of the reconstruction time.

19 Q. Right. And then that paragraph in particular I
20 believe the time frame says 1867 to 1868. Is
21 that correct?

22 A. Yes.

23 Q. Okay. That ends the section of your report on
24 the Education to Freedmen; right?

25 A. Right.

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1 Q. Okay. Now I'd like to move on to the next
2 section about Opposition to Funding of Catholic
3 Schools, if you don't mind. Paragraphs 38
4 through 48. Those don't mention South Carolina
5 or any of its leaders. Do you see that?

6 A. That's true.

7 Q. All right. Paragraph 49. Would you agree it was
8 normal for states who might have initially
9 established religion in the early colonial days
10 to provide for the separation of church and state
11 consistent with the establishment clause?

12 A. I'm sorry, would you ask that again, please?

13 Q. Sure, I'll be glad to repeat it. Would you agree
14 it was normal for states who had initially
15 established religions in their colonial days to
16 provide for the separation of church and state
17 consistent with the establishment clause?

18 A. Well, I love answering that, but I can't answer
19 it briefly. Indeed I deal with that at great
20 length and I believe that's something...

21 Q. Sorry. Can you say that again. I couldn't hear
22 that last statement. Would you repeat it?

23 A. Yeah. Most states were working hard at -- well,
24 to distinguish among the three regions of the
25 country in the early national period. In New

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1 England, almost all schools were locally
2 supported. They had a religious character, and
3 the state had only a marginal oversight lull. In
4 the middle Atlantic states, New York,
5 Pennsylvania, New Jersey, almost all schooling
6 was denominational. That is, schools were
7 started by religious groups for their own
8 members. Only occasionally did the state provide
9 funding for those schools, but when it did no
10 questions were raised about the First Amendment.
11 Indeed, I -- I don't find any use of the First
12 Amendment to oppose religious schooling right
13 through there, since the 19th century ruling. If
14 there had been such an opposition based on the
15 First Amendment, it seems difficult to understand
16 why Blaine would have attempted to have a new
17 amendment added to the Constitution. In the
18 south, it was very mixed and very patchy
19 provision of schooling by the state. North
20 Carolina did a little bit better than most other
21 parts of the south, but it was very patchy mostly
22 again by whoever local groups chose to organize
23 such schooling. In all cases though, you can
24 cite examples of schools with an explicitly
25 religious character. It did receive state

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1 funding and then nobody objected to that state
2 funding on the basis of the First Amendment.

3 Q. You mentioned how various regions reacted
4 differently particularly with respect to
5 education. Would you agree that even within the
6 south, there were a lot of differences of
7 opinions even among the states themselves?

8 A. Well, opinion or differences in practice? Are we
9 talking about the period of the early 19th
10 Century or --

11 Q. Earlier you mentioned how New England may have
12 reacted differently than maybe the south or
13 various other regions. Did I hear that
14 correctly?

15 A. Yes.

16 Q. Okay.

17 A. So, are we talking about, let's say, 1800?

18 Q. Sure.

19 A. Sure. Okay. Well, in 1800 what little schooling
20 was available in the south was mostly provided by
21 tutors on the plantations of the wealthy
22 plantation owners for their own children and some
23 of their neighbors. In Charleston and other
24 places by churches and charitable groups. I've
25 already mentioned in Charleston the Anglican

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1 Church actually purchased slaves and established
2 a school having those slaves teach other black
3 individuals -- freed individuals. So, there's a
4 whole patch work but very little that you could
5 call new policy.

6 Q. And that was even within the south, would you
7 agree?

8 A. I'm saying that was the case in the south. You
9 can cite much more policy in the New England area
10 or in the mid-Atlantic area.

11 Q. Okay. Would you agree that even within South
12 Carolina, different attitudes and policies and
13 opinions were prevalent at the time?

14 A. I assume so, but I'm not a historian of South
15 Carolina, so --

16 Q. Okay.

17 A. -- you'll have to ask that question elsewhere.

18 Q. Okay. Thank you. Paragraphs 50 through 63 in
19 your report. If you need a second to read them,
20 I'm happy to accommodate you, but those are all
21 part of a national discussion and don't
22 specifically mention South Carolina, do they?

23 A. Right. What is striking -- I mean, what should I
24 say? The implication for South Carolina or the
25 influence of South Carolina, you can say, and I

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1 argue this in length in my book which I quote
2 from here is that the Republican party in the
3 mid-1870s recognized that it no longer had a
4 winning political issue in supporting the rights
5 and interests of formerly enslaved persons in the
6 south. In other words, as the Republican party
7 began to back out of its support for
8 reconstruction, it was casting around for another
9 issue that could get the voters stirred up and
10 that issue as President Grant specifically showed
11 and others did was anxiety about the growing
12 Catholic presence particularly in northern urban
13 areas. Now, ironically, the Ku Klux Klan was
14 also part of that anti-Catholic movement even
15 though there were few -- few Catholics outside of
16 Louisiana. But, in general, the sense of anti-
17 Catholic anxiety was in effect the new issue and
18 replaced the issue of doing justice for black
19 southerners or the black northerners who were
20 also being treated unjustly with the issue of
21 opposing the claims of the Catholic church. And
22 the point in which those claims became most
23 volatile were around schooling as I show in some
24 detail in these paragraphs.

25 **Q. Are you're suggesting that President Grant and**

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1 **South Carolinians shared political views at that**
2 **time?**

3 A. No. I'm suggesting that as General Grant --
4 President Grant, realized he could no longer gain
5 political mileage by opposing the efforts of the
6 white leadership in South Carolina to roll back
7 the effects of the various post-emancipation
8 reforms that he looked for another issue and it
9 was the vacancy or the falling away of the issue
10 of a racial justice which pointed the way to
11 using religious concerns as the organizing
12 motivation for the Republican voters across the
13 north.

14 Q. But you're not trying to attribute what leaders
15 from other states thought to South Carolina, are
16 you, as evidence of what was going on in South
17 Carolina at the time?

18 A. No. What I'm referring to is the rollback of the
19 reforms opposed to emancipation of forms, and I
20 think I've already showed that that occurred.
21 Now, I'm not -- I'm not making any statements
22 about how South Carolina leaders felt about
23 Catholics, if that's what you're asking.

24 Q. I'm sorry. You broke up there at the end.
25 You're not making any statements about South

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1 Carolina what?

2 A. How they felt about Catholics.

3 Q. Okay. Okay.

4 A. I do point out that the Klan was very much anti-
5 Catholic and would be a key role, by the way, for
6 example, in the Oregon -- the famous case in
7 Oregon was because the Klan in Oregon was
8 organizing against Catholic so, you know, those
9 linkages exist but I have not attempted to trace
10 them.

11 Q. Okay. Because, I mean, you would agree that
12 Oregon and South Carolina are different regions,
13 different attitudes, very different politically?

14 A. Correct.

15 Q. Okay. All right. If you wouldn't mind looking
16 at paragraph 64, please. Can you please explain
17 your opinion that, quote, one can in fact trace a
18 line of decent of anti-immigrant, anti-Catholic
19 agitation from the 1850s to the present?

20 A. That's just -- so, I'm not clear what it is
21 you're asking.

22 Q. Yeah. Can you explain that opinion? That's a
23 pretty broad statement.

24 A. Well, let's go the beginning of that paragraph.
25 So, state level campaigns against support for

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1 Catholic schools were promoted by organizations
2 like the APA which was a secret society reviving
3 the know-nothing party which had been a pre-
4 Civil War movement which faded. Again this sort
5 of alternate. I mentioned already how the
6 switching from race to religion as a focus in
7 the 1870s one might mention that in the 1850s
8 there's a switch from religion to race. In
9 other words, the anti-Catholic movement faded
10 because abolition became a bigger deal in the
11 north, and the APA opposed funding of Catholic
12 schools. It's influence was greatest at the
13 state level as would be the case in the 1920s of
14 the revived Ku Klux Klan which agitated the
15 state laws and the Catholic schools most notably
16 in Oregon, and I mentioned that a minute ago.
17 One can in fact trace a descent of anti-
18 immigrant, anti-Catholic education in the 1850s
19 to the present, and I ask why that is serious.
20 We've had anti-Catholic, at least in my
21 lifetime, around the election of President
22 Kennedy and so forth.

23 **Q. Sure. Well, and on that note, are you aware**
24 **that the former Chief Justice in South Carolina,**
25 **a female, served in that role for over 14 years**

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1 starting in 2000?

2 A. No.

3 MR. DUKES: Object to the form.

4 Q. Okay. And were you aware that the General
5 Assembly elects judges in South Carolina?

6 A. No.

7 Q. Okay. Are you aware that the current Lieutenant
8 Governor who was popularly elected by the people
9 in South Carolina is Catholic?

10 A. No.

11 Q. Okay. And are you aware that South Carolina's
12 last governor, the daughter of immigrants, was
13 popularly elected twice to that office?

14 A. I am aware of that.

15 Q. Okay. Are you aware that the current Chief
16 Justice in South Carolina is African-American?

17 A. I was aware of that, yes.

18 Q. Okay. And are you aware that South Carolina has
19 one of only three African Americans in the
20 United States Senate?

21 A. Yes.

22 Q. Representing our state?

23 A. Yes.

24 Q. Okay. So, how does that square with your
25 opinion that anti-immigrant, anti-Catholic is

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1 traced to the present? Upon what evidence do
2 you rely to make that assertion?

3 A. Well, I'm not really talking here and perhaps I
4 ought to have made that clear about the 2020s,
5 but I was in jail in North Carolina in '63 as
6 part of the Freedom Movement. I was at Selma in
7 1965. It is not so long ago that I crossed the
8 south and I hasten to say I crossed the north
9 that anti-black prejudice existed and had a
10 powerful effect. After all my job with the
11 state involved was actually dealing with such
12 issues. And you will not be unaware that even
13 in our own days there are powerful concerns
14 about racial attitudes in American life. So, I
15 don't think I'm going too far out of bounds to
16 say that one always has to be concerned about
17 whether there may be racial considerations
18 involved no matter how many African Americans or
19 immigrants may be in significant roles. Now, if
20 I'm wrong about that, I'm in good company with
21 many other thoughtful Americans.

22 Q. Well, just for purposes of your deposition, Dr.
23 Glenn, you know, we have to have the evidence
24 upon which you rely to make your opinions, and I
25 heard you give some anecdotal about North

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1 Carolina, but what evidence do have to support
2 other than anecdotal that anti-immigrant, anti-
3 Catholic agitation can be traced to the present?

4 A. Well, what I wrote about is the decisions made
5 in South Carolina in the late 19th Century, and
6 you're trying to bring it into 50 years later.

7 Q. Well, it says to the present.

8 A. Well, okay, they were cast --

9 Q. Do you want to walk that back?

10 A. Let me take out those words and say, I mean I
11 don't actually disagree with the statement, but
12 I'm not going to attempt to prove it because my
13 purpose in writing that was not to argue about
14 what may be occurring right now in South
15 Carolina or in any other state for that matter.

16 Q. Okay. So, your focus was primarily on the 19th
17 Century there?

18 A. And the motivations behind the amendment of the
19 South Carolina Constitution which in 1895 which
20 I regard as being a significant indicator of the
21 sorts of motivations that were part of the
22 provision, but not allowing funding of faith-
23 based schools.

24 Q. As that was in 1895; right?

25 A. Yes.

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1 Q. Okay. All right. Let's move on. Does
2 paragraph 65 mention South Carolina?

3 A. No, it does not.

4 Q. Okay. So, next we're going to move to, I would
5 say, the third portion of your report titled
6 Reversing Gains Made Under Reconstruction. Dr.
7 Glenn, are you good? Do you need a break or
8 anything?

9 A. No, I'm fine.

10 Q. Okay. I just want to be respectful of your
11 time, okay? All right. Paragraph 66, is that
12 just sort of general commentary about the post-
13 reconstruction era from 1977 through 19 -- or
14 1877 through 1954?

15 A. Right.

16 Q. Okay. Is South Carolina specifically not
17 mentioned?

18 A. It is specifically mentioned in the next
19 paragraph.

20 Q. Okay. So, let's go to that. So, paragraph 67
21 you included some national statistics there;
22 right?

23 A. Right.

24 Q. Okay. And then mention the provisions of the
25 1895 version of South Carolina's Constitution?

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1 A. Right.

2 Q. Is that right?

3 A. Yes.

4 Q. Okay. And you're aware that's no longer in
5 place with respect to the provision at issue
6 here?

7 A. Yes.

8 Q. Okay. Paragraph 68 does not involve South
9 Carolina, does it?

10 A. No.

11 Q. Okay. Paragraph 69. Discusses the two prior
12 versions of our State Constitution; correct?

13 A. Yes.

14 Q. Okay.

15 A. I think you have skipped rather hastily over
16 paragraph 67 which arguably is a key element.

17 Q. Okay. What opinions do you have to offer about
18 paragraph 67?

19 A. Well, not opinions. Simply facts that it is not
20 accidental in my view, in my judgment, that the
21 provision to prevent funding of faith-based
22 schools was occurring at a time when a large
23 share of the schooling available to black South
24 Carolinians was provided by faith-based schools.
25 Not necessarily Catholic schools; mostly non-

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1 Catholic schools. But that the provision
2 against -- the provision of firing a literacy
3 test for voting is not unrelated to the
4 provision against funding faith-based schools
5 because --

6 Q. In 1895?

7 A. -- in 1895.

8 Q. All right.

9 A. Because faith-based schools were a major source
10 of literacy for African Americans in South
11 Carolina. That's all I wanted to emphasize.

12 Q. All right. Thank you, Dr. Glenn. I appreciate
13 that. All right. If we can flip to the next
14 page. Paragraph 70, that doesn't deal with
15 South Carolina?

16 A. That's correct.

17 Q. Okay. And I'll clarify for the record that says
18 Bardiman [ph] not Boardman. Paragraph 71
19 through 72, those don't deal with South Carolina
20 either, do they?

21 A. No.

22 Q. Okay. 73, you're discussing the Constitution of
23 1895?

24 A. Right.

25 Q. Paragraph 74 through 79, are those primarily a

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1 commentary of late 1800s and the first couple
2 decades of the 20th Century?

3 A. Yes, they are.

4 Q. Anything specific about South Carolina in there?

5 A. 1775, of course, is specifically talking about a
6 South Carolina Governor and Senator Tillman.

7 Q. All right. And what was the year of that quote?

8 A. I don't remember now.

9 Q. Okay. That's fine.

10 A. It was when he was Senator rather than when he
11 was Governor.

12 Q. Okay. Paragraph 80, does that concern South
13 Carolina?

14 A. Paragraph 80 is about racism in the north, but
15 also about famous film, Birth of a Nation, and
16 how that shows in the early 20th Century the
17 power of white racism continued, extremely
18 powerful, north and south.

19 Q. Okay. All right. And next paragraphs 81 and
20 82, those aren't specifically about South
21 Carolina, are they?

22 A. Not specifically.

23 Q. Okay.

24 A. They're about the south in general which, of
25 course, includes South Carolina.

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1 Q. Okay. But we've discussed earlier certainly
2 among the south different states reacted
3 differently to education policy; correct?

4 A. Yes.

5 Q. Okay. Thanks. Dr. Glenn, if you don't mind,
6 I'm going to take a quick restroom break. We've
7 been going about an hour and 18 minutes. So,
8 let's come back at 11 -- it's 11:18. Let's come
9 back at 11:23 if that suits the group. If y'all
10 need more time, that's fine, but five minutes,
11 that'll work.

12 MR. DUKES: Yeah. That's fine with me.

13 Q. We'll go off the record.

14 MADAM COURT REPORTER: All right. We're off the
15 record. Thank you.

16 (Off the Record)

17 MADAM COURT REPORTER: All right. We're back on the
18 record.

19 Q. All right. Thank you, Dr. Glenn, I appreciate
20 your patience. All right. Next, I want to go
21 down to paragraph 83. That's the sentence about
22 serves Senators Fulbright, Russell, Erwin,
23 Thurmond and Byrd. Do you see that?

24 A. Yes.

25 Q. Okay. Fulbright, Russell, Erwin and Byrd were

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1 not from South Carolina, were they?

2 A. No.

3 Q. Okay. And do you think that that one sentence
4 fully encapsulates those mens' views over the
5 course of their lifetime?

6 MR. DUKES: Object to the form.

7 A. No, I don't.

8 Q. No? Okay. In fact, some have entire books
9 written about them; correct?

10 MR. DUKES: Object to the form.

11 A. Yes, they do. I dated Senator Fulbright's
12 daughter in the old days, so I got to know him a
13 little bit and quite a nice gentleman, but it
14 doesn't mean I agreed with his position about
15 race.

16 Q. And certainly you're not trying to tag the
17 entire south with the views of five people, are
18 you, at that time?

19 A. Of course not, no.

20 Q. Okay. And your report ends at paragraph 83. Is
21 that correct?

22 A. That's correct.

23 Q. Okay. So you're not offering any opinions in
24 this case that post-date 1956. Is that correct?

25 MR. DUKES: Object to the form.

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1 A. That's correct.

2 Q. Okay. All right. Do you know how many times
3 the 1895 South Carolina Constitution was
4 amended?

5 A. No, I don't.

6 Q. Okay. Do you know what the West Committee is?

7 A. I'm not going to comment on anything beyond
8 what's in my text. I've already said I'm not
9 any kind of an expert on South Carolina --

10 Q. Okay.

11 A. -- and so if you want to find out about those
12 things, you'll have to inquire elsewhere.

13 Q. All right. Fair enough. So, you don't have any
14 opinions, criticisms or anything to offer about
15 the West Committee?

16 A. I have no opinions.

17 Q. Okay. All right. And if you'll bear with me
18 for one second, please. Have you read the
19 provision at issue in this case, Dr. Glenn?

20 A. I've read nothing except the document that I
21 already mentioned. Do you want me to give you
22 the reference again?

23 Q. Sure.

24 A. The one filed with the court on April 1st?

25 Q. Uh-huh (affirmative response).

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1 A. Entitled Plaintiff Memorandum in Support of
2 Plaintiff's Motion or Preliminary Injunction. I
3 have not been provided with any other documents
4 in the case.

5 Q. Okay.

6 A. I would be very interested to read other ones,
7 but I haven't been provided any.

8 Q. All right. I think this is it. Okay. Would
9 you look at Section 4 down there and read that
10 to yourself, please.

11 A. Of what's on the screen, you mean?

12 Q. Yes. I'm sorry. Yeah, what I've shared, and
13 I'll represent to you that's Article 11 Section
14 4 of the South Carolina Constitution in its
15 current form.

16 A. Do you want me to read it aloud?

17 Q. Sure.

18 A. Okay. Direct pay to religious or other private
19 educational institutions prohibited. No money
20 shall be paid from public funds nor shall the
21 credit of the state or any of its political
22 subdivisions be used for the direct benefit of
23 any religious or other private educational
24 institution.

25 Q. Okay. Dr. Glenn, would you agree with me that

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1 that applies to every private school in South
2 Carolina?

3 A. I'm not the one to interpret South Carolina law.
4 You have several South Carolina lawyers here and
5 I'm sure you can agree among yourselves how to
6 interpret, but it's not my job to interpret your
7 laws. I had a challenging enough time
8 interpreting Massachusetts laws when I was a
9 State Government official.

10 Q. Did you see race mentioned anywhere in that
11 provision?

12 A. No.

13 Q. Okay. All right. Dr. Glenn, do you intend to
14 offer any other opinions in this matter other
15 than that which appears in your report and
16 what's been discussed during your deposition
17 this morning?

18 A. No, I have no opinions about the present
19 situation in South Carolina, because I'm not
20 sufficiently knowledgeable to have such
21 opinions.

22 Q. Okay. All right. Well, I believe that's all I
23 have. Thank you so much for your time. I
24 really do appreciate it. And I hope you're not
25 too sore from your tumble earlier this morning,

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1 but thank you for being with us. I'll pass it
2 along to whomever else might want to ask you
3 some questions.

4 A. Okay. Thanks a lot.

5 Q. All right. Let me unshare this.

6 MR. MATTHEWS: Lyle or the other Defendants -- are
7 there other Defendants rather than me?

8 MR. TRAYWICK: I believe David Leggett is here
9 representing the intervener, the Attorney
10 General on behalf of the State of South
11 Carolina. I don't know if he has any questions,
12 but y'all will be the only two left.

13 MR. MATTHEWS: All right. Mr. Leggett, do you mind
14 if I proceed?

15 MR. LEGGETT: Go right ahead. I don't have any
16 questions on behalf of the State.

17 MR. MATTHEWS: All right.

18 MR. GLENN - CROSS-EXAMINATION BY MR. MATTHEWS:

19 Q. Dr. Glenn, my name is Gene Matthews. I
20 represent two of the gentlemen or officials who
21 are being sued in this lawsuit, Ms. Adams and
22 Mr. Gaines. If I understand and we can probably
23 bring this to a pretty quick conclusion. My
24 understanding is you have no knowledge as to the
25 activities of the West Committee who amended the

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1 provision of the South Carolina Constitution
2 that is an issue in this case; correct?

3 A. That's correct.

4 Q. Okay. So, you would have, I think I know the
5 answers to these questions, but I do need to go
6 through them for the record. You have no
7 knowledge about what motivated their activities
8 and when I say they, I mean the West Committee?

9 A. I have neither knowledge nor opinion about their
10 motivations.

11 Q. Okay. You have no knowledge of the sequence of
12 events that led to the amendments that was
13 proposed by the West Committee and made a part
14 of the South Carolina Constitution; correct?

15 A. No, I do not.

16 Q. Okay. You have no knowledge about whether or
17 not the activities of the West Committee or the
18 amendment to the Constitution departed in any
19 normal way from the procedural sequence that
20 usually leads to such amendments; correct?

21 A. No, I do not.

22 Q. Okay. You have no knowledge about whether the
23 amendment as currently stated has a
24 disproportional impact of one race or religion
25 of another?

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1 A. I'm sorry?

2 Q. I'll repeat the question. Is it true, this will
3 make it easier, is it true that you have no
4 knowledge or opinion as to whether the amendment
5 in question or the provision in question has a
6 disproportionate impact more heavily on one race
7 or religion than another? Is that correct?

8 A. I have no knowledge of that. The way you asked
9 it leads me to not know whether to answer yes or
10 no. I'm sorry.

11 Q. Well, let me try again.

12 A. Okay.

13 Q. Doctor, I'm going to try again. Do you
14 understand? I'm going to ask another question.

15 A. Okay.

16 Q. All right. Do you have any knowledge about
17 whether or not the Constitutional provision in
18 question as currently formulated has a
19 disproportionate impact on one religion or one
20 race more so than another?

21 A. I have no knowledge about that.

22 Q. All right. Have you ever dealt or opined on the
23 Constitutional provision of any other state that
24 forbade public support of private education?

25 A. Yes.

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1 Q. Okay. Tell me about that.

2 A. As a Massachusetts state official, I was called
3 upon to express my opinions on the Massachusetts
4 Constitution which forbids funding with public
5 funds any schooling not provided by government -
6 -

7 Q. Okay.

8 A. -- even though -- even though Massachusetts, in
9 fact, was funding the attendance of children
10 with extreme special needs in private and non-
11 governmental schools.

12 Q. All right.

13 A. My opinion and I expressed this as the State
14 official responsible in those areas was that
15 Massachusetts was in fact violating its own
16 Constitution in doing so.

17 Q. What was the result of that opinion?

18 A. It was completely ignored because Massachusetts
19 had too great an interest frankly in continuing
20 to place children with extreme special needs in
21 such schools -- in such highly specialized
22 schools.

23 Q. Thank you, sir. Did you believe that that
24 provision of the Massachusetts Constitution
25 violated in any way the Federal Constitution?

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1 A. I expressed no opinion about that.

2 Q. Do you have such an opinion?

3 A. I really have not attempted to get my mind
4 around that.

5 Q. So, you have no such opinion. Is that correct?

6 A. That's correct.

7 Q. All right. And do you have just a -- this will
8 be my final question, I believe, you have no
9 knowledge as to whether or not the -- whether
10 it's the South Carolina General Assembly, the
11 West Commission or the West Committee or any
12 other body that would have had a role to play in
13 the amendment of the provision in 1972? You
14 have no knowledge about it's motivations;
15 correct?

16 A. That's correct.

17 Q. Okay. Thank you, Doctor. I have no further
18 questions.

19 MR. DUKES: I just have a couple, as long as David
20 doesn't have any questions.

21 MR. LEGGETT: None for me.

22 THE WITNESS: I admire that bow tie, David. That's
23 very damper.

24 MR. LEGGETT: Thank you.

25 MR. GLENN - CROSS-EXAMINATION BY MR. DUKES:

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1 Q. Dr. Glenn, your expertise -- part of your
2 expertise is in, what we refer to as, Blaine
3 Amendments; right?

4 A. Yes.

5 Q. And Blaine Amendments are amendments to
6 originally the Federal Constitution but later
7 rejected on the Federal level in State
8 Constitutions that forbid public funding for
9 private and religious schools. Is that correct?

10 A. Yes.

11 Q. And is it your opinion that Blaine -- Blaine
12 Amendments generally were adopted by the states
13 based on motivations of racial and religious
14 animus?

15 MR. TRAYWICK: Object to the form of the question.

16 A. Well, let me make a distinction. I said a
17 minute ago that I don't have an opinion about
18 conflict with the U.S. Constitution. Because,
19 in my view, it's up to the U.S. Supreme Court to
20 decide that. But as a historian, I am convinced
21 that the motivation behind the adoption of those
22 provisions was overwhelmingly, across the
23 country, hostility toward the Catholic
24 population and concern about its education and
25 in a number of southern states with racial

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1 elements in addition because of the significant
2 role of faith-based schooling in providing
3 literacy for formerly enslaved persons. So, I'm
4 clear about what I think motivations were.
5 Whether that amounts to fundamental conflict
6 with the U.S. Constitution is up to the Supreme
7 Court to determine and not me.

8 **Q. And it's your opinion that South Carolina, in**
9 **adopting a Blaine Amendment, had the same**
10 **motivations as other states that adopted Blaine**
11 **Amendments; correct?**

12 **MR. TRAYWICK:** Object to the form of the question.

13 **A.** Well, as I mentioned a few minutes ago, I think
14 the true provisions in the 1895 Constitutional
15 Amendment in South Carolina were intended to
16 work together to forbid faith-based schooling
17 being supported by any public funds in part as a
18 way to make it more difficult for 4,000,000
19 slave persons and their children to obtain the
20 literacy that would be required to vote. So, I
21 think those -- my judgment, I'm not sure opinion
22 is the word I would use, my judgment as a
23 historian who has looked at the record is in
24 fact those two aspects of the 1895 Constitution
25 are related.

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1 Q. And Mr. Traywick showed you the current Article
2 11 Section 4 of the South Carolina Constitution
3 that forbids state funding going to religious
4 and private schools; right? Do you remember
5 looking at that on the screen?

6 A. Yes, I do.

7 Q. And is it your opinion that that is a
8 quintessential Blaine amendment?

9 MR. TRAYWICK: Object to the form of the question.

10 A. Yes, it is. You're not asking me whether I
11 think it's unconstitutional.

12 Q. No. I'm just asking you if the language of that
13 provision --

14 A. Right.

15 Q. -- falls squarely within --

16 A. Absolutely.

17 Q. -- what is referred to as a Blaine Amendment.

18 MR. TRAYWICK: Object to the form of the question.

19 A. Absolutely. And like the similar provisions in
20 a number of other states.

21 Q. That's all I have for you, Dr. Glenn. Thank you
22 very much.

23 MR. GLENN - RE-EXAMINATION BY MR. TRAYWICK:

24 Q. Dr. Glenn, just a few follow-ups in reply.
25 Earlier you agreed with me that you were not

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1 offering any opinions that post-dated 1956 in
2 this case; right?

3 A. Right. I'm not sure.

4 Q. Is that correct?

5 A. Well, if you're referring to my judgment about
6 the provision that you showed me on the screen,
7 that, of course, is post-1895 and post-1965.

8 Q. Okay. That's not anywhere in your expert
9 report, is it?

10 A. No, not at all. You asked me, and I made a
11 judgment about it.

12 Q. Okay. Well, actually, you wouldn't answer my
13 question, so I'm getting confused between
14 judgment versus opinion. How do you distinguish
15 those words?

16 A. Well, an opinion is what we feel based upon all
17 kinds of things. A judgment is based upon solid
18 evidence. I've looked at a lot of Blaine
19 Amendments and so I'm very familiar with what
20 form they take and therefore looking at that
21 particular provision that you showed me on the
22 screen, I can form a judgment which is not just
23 an opinion, that in fact, is similar to the
24 other Blaine Amendments. I'm not -- I could
25 offer an opinion about its Constitutionality but

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1 I'm not offering such an opinion, because I'm
2 not qualified to do so.

3 Q. Okay. And in your judgment then, does it apply
4 to every single private school in South
5 Carolina?

6 MR. DUKES: Object to the form.

7 A. It appears to do so.

8 Q. Okay. In your judgment, does it mention race at
9 all?

10 A. No.

11 Q. Okay. But you don't have anywhere in your
12 report, any expert opinions, for this matter
13 about the Constitutional provision at issue in
14 this case, do you?

15 A. I missed the word you said there, the
16 Constitutional provision --

17 Q. At issue in this case.

18 A. At issue. I have some judgments about the
19 historical background for the adoption of the
20 1895 Constitutional provision.

21 Q. Right. 1895; correct?

22 A. That I have a judgment about. I have no
23 judgment about the motivations behind the
24 adoption of the provision that you showed me on
25 the screen. I made that clear.

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1 Q. Okay. Well, I wanted to make that clear,
2 because I don't think that was clear upon cross.
3 So, you've got no opinions or judgments about
4 any of the work of the West Committee that
5 revised what you characterized as a Blaine
6 Amendment for the 1895 Constitution, do you?

7 A. No.

8 Q. Okay. Thank you. That's all the questions I
9 have.

10 MR. MATTHEWS: Nothing more from me.

11 MR. DUKES: I'm fine. I'm good to go.

12 MADAM COURT REPORTER: All right. We're off the
13 record.

14 (There being no further questions, the deposition
15 concluded at 11:43 a.m.)
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CERTIFICATE OF REPORTER

I, BARBARA S. HAM, COURT REPORTER AND NOTARY PUBLIC
IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
CERTIFY THAT I REPORTED THE DEPOSITION OF CHARLES GLENN,
ON TUESDAY, THE 31ST DAY OF AUGUST, 2021, THAT THE WITNESS
WAS FIRST DULY SWORN BY ME AND THAT THE FOREGOING 71 PAGES
CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF SAID
DEPOSITION.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR
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INTERESTED IN SAID CAUSE.

I FURTHER CERTIFY THAT THE ORIGINAL OF SAID
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IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS
10TH DAY OF SEPTEMBER, 2021.

Barbara S. Ham

BARBARA S. HAM, COURT REPORTER

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